UNIVERSITÀ
DEGLI STUDI DI MILANO-BICOCCA

COURSE SYLLABUS

Theories of Interpretation

2324-3-A5810033

Learning objectives

Interpretation is a necessary and crucial activity in the study of law as well as in actual legal practice: on the one hand the determination of the content of legal acts and statutes requires the adoption of a definite and motivated interpretative choice, on the other hand the outcome of legal cases depends on the ability to find and propose normative interpretations sustained by pertinent and persuasive arguments.
The main learning objectives are the acquisition of a critical awareness of the linguistic, juridical and epistemological presuppositions of legal interpretation, as well as the acquisition of mature theoretical and practical skills in the recognition and argumentation of interpretative choices.

Contents

The course will be articulated in four main parts.
The *first* part will be devoted to the acquisition of some categories of contemporary linguistics and semiotics that are indispensable for understanding interpretative activity in general and legal interpretation in particular.
The* second* part will be devoted to a critical reflection on the role of legal norms as 'schemes of interpretation' of social phenomena and the theoretical distinction between subjective legal meaning and objective legal meaning.
The *third* part will be devoted to a critical discussion of the main theories of legal interpretation, and in particular to a comparison between cognitive and skeptical theories of interpretation.
In the *fourth* part, more specifically oriented towards the acquisition of practical skills, the main interpretative techniques in use in the field of legal interpretation will be examined and a reflection will be introduced on some of the tools that topics and rhetoric can offer for the analysis and construction of interpretative arguments.

Detailed program

1. Fundamental categories of semiotics
   1.1. The notion of “sign”: natural and artificial signs
   1.2. The notion of meaning
   1.3. Interpretation and categorization
   1.4. Interpretation and conversation
   1.5. How to do things with words: speech acts and the law
   1.6. The problems of interpretation: vagueness, semantic ambiguity, pragmatic ambivalence, and literal meaning

2. Legal norms as schemes of interpretation
   2.1. Natural fact and legal meaning
   2.2. Causal vs. legal interpretation
   2.3. Subjective and objective legal meaning
   2.4. The dynamic structure of law and the role of interpretation

3. Theories of legal interpretation
   3.1. Recognitive, reproductive, and normative interpretation
   3.2. The role of interpretation and courts in the determination of the law
   3.3. Cognitive theories of legal interpretation: interpretation as an act of knowledge
   3.4. Skeptical theories of legal interpretation: interpretation as an act of will

4. Interpretation and argumentation as a practice
   4.1. Interpretative techniques or arguments
   4.2. Topic and rhetoric as argumentative instruments for legal praxis

Prerequisites

The course does not have any particular prerequisites, with the exception of a general knowledge of basic legal concepts (legal system, legal norm, role of the judge), which will in any case be discussed in class.
The fundamentals of semiotics and linguistics necessary for the acquisition of the course's learning objectives will be provided and discussed during the first part of the course.

Teaching methods

Classes will be frontal lectures in Italian, marked by confrontation and debate among the students, and aimed at the acquisition of notions and skills through critical reasoning.
The autonomous individuation of salient problems and the critical acquisition of the relevant categories for the attainment of the learning objectives will be promoted, as well as the development of argumentative skills.
Students may optionally be assigned the analysis of a short paper to be discussed during classes.
Foreign students and students from different degree courses can agree upon supplementary tutoring lectures with the teacher.

Assessment methods

Assessment method consists in a final viva voce examination on the topics discussed during the course and will be

aimed at ascertaining the acquisition of a critical awareness concerning the theoretical and practical issues connected to interpretation in the study of law and in legal practice, as well as of the relevant theoretical notions and argumentative skills to confront them on a critical basis.

Students may choose whether to prepare for the exam by making use of the recommended bibliography for attending students, which will be indicated during the course of the lectures, or the recommended bibliography for non-attending students. In the first case they will have to demonstrate that they have acquired an adequate and complete knowledge of the topics covered in lectures and in the texts indicated during the lectures. In the second case they will have to demonstrate that they have acquired adequate and complete knowledge of the topics covered in the texts indicated in the bibliography recommended for non-frequenting students.

There are no intermediate tests.

Textbooks and Reading Materials

Textbooks and reading materials recommended *for attending students*

Given the interdisciplinarity of the topics concerned, textbooks and reading materials will be determined during the lectures. They shall include some specific sections of the following books (sections will be detailed during classes and through the e-learning website):

1. Lorenzo CANTONI/Nicoletta DI BLAS, Teoria e pratiche della comunicazione. Milano, Apogeo, 2002.
2. Umberto ECO, I limiti dell'interpretazione. Milano, La nave di Teseo, 2016.
3. Umberto ECO, Trattato di semiotica generale. Milano, La Nave di Teseo, 2016.
4. H. Paul GRICE, Logica e conversazione. In: Marina SBISÀ (ed.), Gli atti linguistici. Aspetti e problemi di filosofia del linguaggio. Milano, Feltrinelli, 1978, 1995, pp. 199-219.
5. Riccardo GUASTINI, Le fonti del diritto e l'interpretazione. Giuffrè, Milano, 1993.
6. Riccardo GUASTINI, Lezioni di teoria del diritto e dello stato. Torino, Giappichelli, 2006.
7. Hans KELSEN, Lineamenti di dottrina pura del diritto. Torino, Einaudi, 1952.
8. Hans KELSEN, Che cos'è la giustizia? Lezioni americane. Seconda edizione, Macerata, Quodlibet, 2021.
9. Lelio LANTELLA/Raffaele CATERINA, Se X allora Y. Volume II: lavorare con le regole. Torino, Giappichelli, 2009.
10. Giuseppe LORINI/Lorenzo PASSERINI GLAZEL (eds.), Filosofie della norma. Torino, Giappichelli, 2012.
11. Giovanni PASCUZZI, Riconoscere e usare gli argomenti interpretativi. In "Diritto e formazione", 7 (2007), n. 2, pp. 289-297.
12. Lorenzo PASSERINI GLAZEL, La forza normativa del tipo. Pragmatica dell'atto giuridico e teoria della categorizzazione, Macerata, Quodlibet, 2005.
13. Lorenzo PASSERINI GLAZEL, Le realtà della norma, le norme come realtà. Saggio di filosofia del diritto. Milano, LED, 2020 (open access on publisher's website).
14. John R. SEARLE, Il mistero della realtà. Milano, Raffaello Cortina, 2019, limitatamente a lezione 5., § II-IV, pp. 155 161.
15. Ugo VOLLI, Manuale di semiotica. Roma-Bari, Laterza, 2003.

Textbooks and reading materials recommendend *for non-attending students*

In order to allow non-attending students to reach a full understanding of the topics of the course, textbooks and reading materials for non-attending students are the following:

1. Lorenzo CANTONI/Nicoletta DI BLAS, Teoria e pratiche della comunicazione. Milano, Apogeo, 2002 (only paragraphs 1.1, 1.2., 1.3, 1.4., 1.5., 1.6.).
2. Ugo VOLLI, Manuale di semiotica. Roma-Bari, Laterza, 2003, Chap. 1., §§ 1.1., 1.2., 1.3., pp. 3-12.
3. Umberto ECO, I limiti dell'interpretazione. Milano, La nave di Teseo, 2016, pp. 13-19.

4. Umberto ECO, Trattato di semiotica generale. Milano, La Nave di Teseo, 2016, §§ 0.1.3., 0.3., 0.5., 0.6.1., 0.7.1.
5. John R. SEARLE, Il mistero della realtà. Milano, Raffaello Cortina, 2019, lesson 5., § II-IV, pp. 155 161.
6. Lorenzo PASSERINI GLAZEL, La forza normativa del tipo. Pragmatica dell'atto giuridico e teoria della categorizzazione. Macerata, Quodlibet, 2005 (ch. 3.).
7. H. Paul GRICE, Logica e conversazione. In: Marina SBISÀ (ed.), Gli atti linguistici. Aspetti e problemi di filosofia del linguaggio. Milano, Feltrinelli, 1978, 1995, pp. 199-219.
8. Hans KELSEN, Che cos'è la giustizia? Lezioni americane. A cura di Paolo Di Lucia e Lorenzo Passerini Glazel. Macerata, Quodlibet, 2015 (§§ 1.-5. e 7. della prima lezione).
9. Hans KELSEN, Lineamenti di dottrina pura del diritto. Torino, Einaudi, 1952 (ch. VI. L'interpretazione).
10. Riccardo GUASTINI, Le fonti del diritto e l'interpretazione. Giuffrè, Milano, 1993 (chapters I, II, XXIV, XXV, XXVI, XXIX).
11. Riccardo GUASTINI, Lezioni di teoria del diritto e dello stato. Torino, Giappichelli, 2006 (second part, chapters I, II, III).
12. Giovanni PASCUZZI, Riconoscere e usare gli argomenti interpretativi. In "Diritto e formazione", 7 (2007), n. 2, pp. 289-297.
13. Lelio LANTELLA/Raffaele CATERINA, Se X allora Y. II: lavorare con le regole. Torino, Giappichelli, 2009. (ch. 1, and §§ 2.1. e 2.2.1. of ch. 2.).

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